**Cedar Grove Manor Convalescent Center *and* 1115 Nursing Home and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL–CIO and District 6, International Union of Industrial, Service, Transportation and Health Employees, Intervenor**

**Local 1115, Nursing Home and Hospital Employees, a Division of 1115 District Council, H.E.R.E., AFL–CIO *and* District 6, International Union of Industrial, Service, Transportation and Health Employees.** Cases 22–CA–17729, 22–CA–17749, and 29–CB–7911

July 29, 1994

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On May 18, 1993, Administrative Law Judge Robert T. Snyder issued the attached decision. Counsel for the Respondent Employer, the Respondent Union, and the Intervenor filed exceptions and supporting briefs, and counsel for the General Counsel filed an answering brief to the Respondent Union's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings,[2] findings,[3] and conclusions[4] and to adopt the recommended Order.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent Employer, Cedar Grove Manor Convalescent Center, Cedar Grove, New Jersey, its officers, agents, successors, and assigns, and the Respondent Union, Local 1115, Nursing Home and Hospital Employees, a Division of 1115 District Council, H.E.R.E., AFL–CIO, Westbury, New York, its officers, agents, and representatives, shall take the action set forth in the Order.

[1] We deny the Respondent Union's request that we reject the Intervenor's exceptions owing to an assertedly defective method of service of a copy of these exceptions on the Respondent Union. The Intervenor has filed an opposition to this request. We find that the method of service was not so deficient in the circumstances as to warrant their rejection.

[2] The Respondent Union contends that the judge committed prejudicial error by sequestering its designated representative, Raul Aldrich, because he would be called to testify. Contrary to this contention, we find that because the judge applied his sequestration ruling even-handedly to the designated representatives of each Respondent, it was not prejudicial to the Respondent Union.

[3] Exceptions have been filed to some of the judge's credibility findings, including his crediting witness Steve Jarema's voice identification of Raul Aldrich as the caller who made telephonic threats to Jarema. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 382 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. Accordingly, we deny the Respondent Union's motion that the Board obtain the transcription tape of Aldrich's testimony at the hearing to make an independent evaluation of Jarema's identification of Aldrich's speaking voice.

We also find without merit the Respondent Union's allegations of bias and prejudice on the part of the judge. On our consideration of the record and the decision, we perceive no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated bias against any party in his analysis or discussions of the evidence.

[4] In adopting the judge's finding of an 8(b)(1)(A) violation, we do not rely on his consideration of the Board's decision in *Windsor Castle Health Care Facilities*, 310 NLRB 579 (1993).

Chairman Gould agrees with the judge's finding that nothing in the record justifies revoking the certification of the Respondent Union as the bargaining agent for the Cedar Grove employees and, therefore, finds it unnecessary to pass on the judge's additional reasons for rejecting the Respondent Employer's affirmative defense to the complaint.

*Bernard S. Mintz, Esq.*, for the General Counsel, Region 22.
*Elaine Robinson, Esq.* and *Thomas M. Maher, Esq.*, for the General Counsel, Region 29.
*Peter A. Schneider, Martin Gringer*, and *Andrea C. Rothman, Esqs. (Kaufman, Naness, Schneider & Rosensweig, P.C.)*, of Melville, New York, for the Respondent Employer.
*Richard M. Greenspan, P.C.*, of White Plains, New York, for the Charging Party in Cases 29–CA–17729 and 22–CA–17749 and for the Respondent Union in Case 29–CB–7911.
*Richard Kirschner, Esq.*, of Washington, D.C., for the Intervenor in Cases 22–CA–17729 and 22–CA–17749 and for the Charging Party in Case 29–CB–7911.

## DECISION

### STATEMENT OF THE CASE

ROBERT T. SNYDER, Administrative Law Judge. These consolidated cases were heard by me on October 15, 1991, and March 4, 5, and 6, 1992, in New York, New York. Initially, in Cases 22–CA–17729 and 22–CA–17749, the consolidated complaint, issued on July 11, 1991, by the Regional Director, Region 22, alleges that Respondent Cedar Grove Manor Convalescent Center (Cedar Grove) had refused to recognize or bargain with 1115 Nursing Home and Hospital Employees Union-New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL–CIO[1] (1115-New Jersey) as exclusive representative of its employees in an appropriate unit, following Local 1115 New Jersey's certification as such exclusive representative. The consolidated complaint also alleges that Cedar Grove refused to furnish 1115-New Jersey with information it requested relevant to its performance as

[1] These names reflect the proper names of these labor organizations, effective February 1, 1992, on motion made by its counsel, without objection, on the second day of hearing on March 4, 1992.

exclusive collective-bargaining representative and unilaterally instituted a savings plan for unit employees. By the foregoing conduct Cedar Grove is alleged to have violated Section 8(a)(1) and (5) of the Act. Cedar Grove is also alleged to have violated Section 8(a)(1), (2), and (3) of the Act by continuing to deduct dues from the wages of some of its employees and to remit such dues to District 6, International Union of Industrial, Service, Transportation and Health Employees (District 6) the Union which had been the unit employees' bargaining representative prior to Local 1115's certification.

In its answer Cedar Grove denied committing any unfair labor practices and interposed, inter alia, an affirmative defense asserting that Local 1115-New Jersey's abuse, possibly criminal, of Board process precludes its being accorded status as a labor organization or, alternatively, of being the certified representative of Respondent's employees.

At the opening of hearing, District 6, which had not been named as a party in the caption nor provided notice of the proceeding, appeared by counsel, and successfully moved to participate in the hearing as an intervenor, based on its status as prior incumbent bargaining representative whose interests would be adversely affected by a determination finding merit to the allegations of the complaint affirming 1115-New Jersey's status as exclusive representative and dismissing Cedar Grove's affirmative defense.

Independent of the foregoing consolidated complaint, the Acting Regional Director, Region 29, had issued a complaint in Case 29–CB–7911 on June 17, 1991, alleging that Local 1115, Nursing Home and Hospital Employees, a Division of 1115 Joint Board[2] (1115), the name of the labor organization prior to its name change and affiliation with the AFL–CIO, by a vice president and agent, by telephone, had threatened a business agent for District 6, with bodily harm if the agent continued to give testimony or other evidence before the Board in Case 29–CB–7618 and in order to discourage access to the Board, under circumstances where the threats became known to employees of Oceanside Convalescence and Rehabilitation Center (Oceanside), and of various other employers, in violation of Section 8(b)(1)(A) of the Act. The charge in Case 29–CB–7618 filed by District 6 alleged that since or about November 15, 1989, 1115 threatened or otherwise interfered with the employees of named employers, including Cedar Grove, because of the exercise by them of rights guaranteed under Section 7 of the Act, by allegedly offering, with employer assistance, to purchase ''District 6 and thereby succeed to its exclusive bargaining agent status among unit employees at various employers with whom District 6 had collective-bargaining agreements.'' That charge had been dismissed by the Region and its dismissal had been sustained on appeal. What was alleged in detail in this charge and what the Region found and concluded as a result of its investigation will be discussed, infra. Respondent 1115 filed answer denying any unfair labor practice.

After District 6 was granted intervenor status on the opening day of hearing in Cases 22–CA–17729 and 22–CA–17749, Respondent Cedar Grove's counsel amended its affirmative defense previously described to now also allege 1115-New Jersey's conduct in Case 29–CB–7911 in threatening a District 6 representative with bodily harm if he continued to give testimony in Case 29–CB–7618 as a further and more specific ground for denying 1115-New Jersey's status as a labor organization or, alternatively, for revoking its certification as exclusive representative of Cedar Grove's unit employees.

Cedar Grove also moved orally at the same hearing to consolidate the CA and CB complaints described, arguing, inter alia, that they raised common issues and involved common parties.

Subsequently, further hearing was postponed pending issuance of an order by me requiring Cedar Grove to perfect its motion by serving the Regional Director for Region 29 and all other parties to the CB proceeding with a written motion seeking the same relief and providing a schedule for responses. After receiving submissions from the parties, I issued an order granting motion to consolidate Case 29–CB–7911 with Cases 22–CA–17749 and 22–CA–17729 and denying the branch of Respondent's motion seeking to compel production of certain FBI tapes which Respondent claimed had been submitted to Region 29 in the investigation of Case 29–CB–7618.

In granting the consolidation, in my order I noted that while the allegations contained in charge in Case 29–CB–7618 were dismissed by the Regional Director for Region 29, such action did not preclude their assertion and litigation as an affirmative defense in a subsequent unfair labor practice proceeding, in reliance on *Chicago Tribune Co.*, 304 NLRB 259 (1991). It was the District 6 agent's testimony in that charge which allegedly led to Local 1115's threats on which complaint issued in Case 29–CB–7911. I concluded that as the threats alleged in Case 29–CB–7911 related to an alleged course of misconduct by 1115-New Jersey asserted as a defense to recognizing its status as certified bargaining representative in Cases 22–CA–17729 and 22–CA–17749, the two cases overlapped, and, therefore, in order to avoid excessive costs and duplication of litigation I would order their consolidation. However, I also noted that I had reservations about certain matters asserted by Respondent Cedar Grove and Intervenor and now Charging Party, District 6, which would have to await their resolution in the presentation and litigation before me. One concerned whether the course of the conduct alleged by them was sufficient to warrant the extraordinary relief sought. Standing alone, 1115's threat as alleged in Case 29–CB–7911, was probably insufficient to justify the vacation of 1115-New Jersey's certification, see *Holiday Inn Palo Alto-Stanford*, 298 NLRB 521 (1990). Another question involved whether Cedar Grove was precluded from raising the defense at all because of a failure to assert it in the underlying representation proceeding. Cedar Grove claimed a lack of knowledge of 1115-New Jersey's conduct during the proceeding leading to its certification but the facts regarding its knowledge and whether it could have known would have to be presented and tested in the litigation. If no Local 1115 threats had been communicated to Cedar Grove employees then they could not have directly affected the outcome of the representation election, apart from the timing of their utterance.[3] Furthermore, if no threats were communicated to employees who were or may have been the object

[2] See fn. 1, above.

[3] The threats are alleged to have been made on October 11 and 12, 1990, and Local 1115's petition in Case 22–RC–10234, involving Cedar Grove, was filed on November 1, 1989.

of 1115-New Jersey's attempts to ''raid'' District 6 bargaining units after District 6 allegedly rejected 1115's buyout attempt, then the nexus may be lacking for concluding that the threat restrained and coerced employees from utilizing the Board in violation of Section 8(b)(1)(A) of the Act.

Hearing resumed on March 4 and 5 and concluded on March 6, 1992, on the consolidated CA and CB cases. Because it could be argued that the implications flowing from the two complaints placed General Counsel in a position of conflict with respect to 1115-New Jersey, the Charging Party in the one, and 1115, the Respondent in the other, a separate counsel for the General Counsel appeared to prosecute the complaint issued by the Acting Regional Director for Region 29 in Case 29–CB–7911.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Each of the parties has filed posthearing briefs. Counsel for 1115-New Jersey and 1115 has filed separate briefs for each of the two cases at my request, as Charging Party and Respondent, respectively, each of the counsels for the General Counsel has filed briefs for the case in which he or she served as proponent for the complaint, and briefs have been filed by Respondent Cedar Grove and Intervenor District 6 in the CA proceeding. Each of these briefs has been carefully considered. On the entire record in the consolidated cases, including my observation of the witnesses and their demeanor, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent, Cedar Grove, a corporation with an office and place of business in Cedar Grove, New Jersey (the Cedar Grove facility) has been engaged in the business of providing health care and related services. During the 12-month period ending July 11, 1991, Cedar Grove, in the course and conduct of its business operations, derived gross revenues in excess of $100,000. During the same period of time Cedar Grove purchased goods valued in excess of $5000 directly from suppliers located outside the State of New Jersey.

Both West Lawrence Care Center, Inc. and Oceanside, employers with whom, at all times material, District 6 has had collective-bargaining relationships, the former with principal office and place of business in the Borough of Queens, New York City and State of New York, where it is engaged in the operation of a residential health care facility and the latter with principal office and place of business in Atlantic City, Atlantic County, State of New Jersey, where it is engaged in the operation of a nursing home providing nursing care services, during the year ending December 31, 1990, derived gross revenues from their respective operations in excess of $100,000. During the same period, West Lawrence purchased and received at its West Lawrence facility products, goods, and materials valued in excess of $50,000 directly from firms located outside the State of New York or from firms located within the State of New York, which firms purchased the goods directly from outside the State of New York. During the same period, Oceanside purchased and received at its Atlantic City facility products, goods, and materials valued in excess of $50,000 directly from firms located outside the State of New Jersey, or from firms located within the State of New Jersey, which firms purchased the goods directly from outside the State of New Jersey.

Based on the foregoing, I find that Cedar Grove, West Lawrence, and Oceanside are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. *Cases 22–CA–17729 and 22–CA–17749*

##### 1. The underlying facts not in dispute

For many years, District 6 represented Cedar Grove's service and maintenance employees who worked 20 hours or more per week. On this basis alone, I find that District 6 is a labor organization within the meaning of the Act. In 1989, 1115-New Jersey filed a petition with the Board in Case 22–RC–10234 seeking to represent these employees. At the hearing held in this matter on November 22, 1989, District 6 intervened in the proceeding, and the parties stipulated that 1115-New Jersey was a labor organization within the meaning of the Act. On February 6, 1990, the Regional Director for Region 22, issued a Decision and Direction of Election, directing an election in the unit of employees historically represented by District 6. District 6 filed a request for review of the Regional Director's Decision and Direction of Election, which was granted by the Board. On April 5, 1990, the Board issued a Decision on Review and Order, modifying the Regional Director's unit determination to the extent of including in the bargaining unit as regular part-time employees eligible to vote those part-time employees who are scheduled to work either five 3-hour shifts a week or two shifts every other weekend as well as on-call employees who regularly averaged 4 or more hours per week in the last quarter. Following the issuance of a Second Direction of Election on November 1, 1990, and the conduct of an election on December 7, 1990, resulting in 61 votes cast for 1115-New Jersey, 0 votes cast for District 6, and 12 challenged ballots, the Regional Director issued a Supplemental Decision and Certification of Representative on January 15, 1991, overruling objections to conduct affecting the results of the election filed by District 6 and certifying 1115-New Jersey as the exclusive bargaining representative of Cedar Grove's service and maintenance employees, more fully described in the certification. Thereafter, the Board issued an Order denying District 6's request for review of the Regional Director's Supplemental Decision and Certification as it failed to raise substantial issues warranting review.

On or about January 28 and April 8, 1991, 1115-New Jersey by certified letters sent to Cedar Grove requested that the Employer recognize it as the exclusive collective-bargaining representative of the employees in the certified unit and bargain collectively with it with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Cedar Grove did not respond to these requests and has failed and refused to recognize and bargain with the Union. 1115-New Jersey also requested Cedar Grove to furnish it with the following information: (1) names and addresses of bargaining unit employees, showing job titles, date of hire, weekly salary, and number of hours worked; (2) amounts of the last three wage changes for the above-described employees; (3) wage changes for the above-described

employees; (4) the actual hours worked; (5) a list of all fringe benefits provided, including medical, hospital, Blue Cross/Blue Shield or other plans, and life insurance provided, holidays, and vacation and sick pay; (6) a summary of all bonuses paid to the employees for the last 3 years; and (7) any other information of compensation provided.

At the hearing, Cedar Grove admitted that the information requested was necessary for and relevant to 1115-New Jersey's performance of its function as the exclusive collective-bargaining representative of the unit, provided it was properly certified as such representative. The parties also agreed that item 6 referred to compensation provided to the unit employees. Cedar Grove had admitted in its answer receipt of the Union's bargaining demands.

Cedar Grove also admitted that since January 15, 1991, it had continued to deduct dues from the wages of some unit employees and remit such dues to District 6, contending however that inasmuch as the Board's certification of 1115-New Jersey was improper, District 6 continued to be the representative of the unit employees entitled to receive such remissions. Cedar Grove further admitted that in about mid-May 1991, it instituted a savings plan for unit employees containing borrowing privileges as well as life insurance, with the possibility that the savings plan could be used to fund retirement benefits, and that it did so without prior notice to 1115-New Jersey or affording the Union an opportunity to negotiate and bargain over the terms of the savings plan, even though the plan was a mandatory subject of bargaining.

Cedar Grove denied the labor organization status of 1115-New Jersey in its answer, although, as earlier noted, it had stipulated to that status in the underlying representation proceeding, and 1115-New Jersey has been certified by the Board as exclusive collective-bargaining representative in numerous Board representation proceedings conducted in the last few years in which District 6 participated as incumbent representative and intervenor.

2. The contested allegations and affirmative defense

1115-New Jersey Business Representative Guy Masters testified that his organization deals with employers with respect to employee grievances and negotiates collective-bargaining agreements with them, and that employees participate in the organization, in processing grievances, negotiating agreements and in union elections.

In spite of the foregoing, Cedar Grove, by its counsel, disputed the organization's labor organization status, disputing that I could take judicial notice of its status in the other proceedings or even that its stipulation to such status in the underlying representation case was binding on it since the matters it raised in its affirmative defense had not come to its knowledge until after the representation proceeding closed. Cedar Grove counsel also acknowledged that while it was relying on the facts underlying its affirmative defense to disqualify 1115-New Jersey from serving as Cedar Grove's unit employees' representative, it was also asserting, as an alternative, albeit novel theory, that 1115-New Jersey's conduct in seeking to buy out District 6 and in physically threatening a District 6 agent from filing charges or seeking Board relief from such activity, rendered it unworthy of status of a labor organization.

In support of its affirmative defense, Cedar Grove deferred to District 6 which called two witnesses to support the claim of alleged abuse of Board process.

The first witness to testify was District 6 President William Perry. He explained that sometime around 1984 or 1985 he was invited to the Manhattan law offices of Morris Tuchman, an attorney who represents various employers with whom District 6 has bargaining relationships. Perry was with Steve Jarema, a business agent for District 6. Present also, besides Tuchman, was Alex De Laurentis, then director of organization for 1115, who later died on February 21, 1986. According to Perry, De Laurentis expressed an interest in buying District 6 for cash, the money to be paid under the table, with District 6 in turn agreeing to deliver the nursing homes it had under contract so that they would recognize and continue bargaining agreement relationships with 1115 without the consent of its members employed by the various nursing homes. The process would also avoid Board involvement. Perry refused to agree to the deal, said District 6 was not for sale, and left the meeting.

As Perry described it, about 1-1/2 years later, Jarema informed Perry that he had been approached by a representative of 1115 to seek to persuade Perry to consummate the deal that De Laurentis had offered on behalf of 1115. Perry advised Jarema to contact the FBI about the matter. Subsequently agents of the FBI visited Perry at the District 6 offices, asked to see Jarema, and then departed with him that day. It was Perry's understanding that Jarema was wired by the FBI and had taped conversations with De Laurentis and other officials of 1115 relating to the buyout offer, as a result of which District 6 filed charges with Region 29 of the Board against 1115 relating to 1115's alleged conduct in seeking to buy District 6 for cash and in threatening a District 6 agent and employees to cease their pursuant of the matter before the Board.

Perry asserted that 1115 is still being investigated by the FBI, although later evidence showed that it had concluded its investigation without finding any basis to pursue a violation of Federal criminal law, that tapes exist of Jarema's meetings with 1115 officials, including one involving 1115 Counsel Richard Greenspan and that they had been supplied to Region 29. That claim was later denied by counsel for General Counsel.

Perry finally claimed that 1115 has followed up what they said they were going to do; unless he sells the organization for cash they will continue to go ahead in trying to ''destroy'' all District 6 bargaining units, whenever they can get hold of them, and Cedar Grove is one of them. This broad claim of a conspiracy to replace District 6 as exclusive representative of the unit employees of Cedar Grove, among other nursing homes, motivated solely by retaliation because District 6 refused to agree to the ''sale'' of its bargaining units and contracts, constitutes the linchpin of District 6's claim that 1115-New Jersey should be denied the benefits of a certified representative of the Cedar Grove employees. It seeks to overcome the absence of any direct evidence of such a motive and enterprise arising from Perry's own testimony, and ignores the Board processing of the underlying representation proceeding without incident or basis for its reversal on review, which resulted in a vote of 61 to 0 in favor of 1115-

New Jersey[4] succeeding District 6 as exclusive bargaining agent.

During Perry's cross-examination by 1115-New Jersey counsel, he asserted that he was told by an FBI supervising agent not to discuss the case or disclose any information involving its ongoing investigation of 1115. He received this advise prior to or at the time of the representation proceeding. As a consequence, District 6, although an intervenor in that proceeding, refrained from raising this issue there. Subsequently Perry declared that District 6 received permission from the FBI to disclose 1115's alleged unlawful conduct shortly after it filed the charges against 1115 and was advised to serve copies on all the parties.

The charge in Case 29–CB–7618 was filed on May 3, 1990, at a time when contrary to Perry, the representation proceeding was still pending, after the Board's Decision and Direction of Election of April 5, 1990, but before the Regional Director's Second Direction of Election on November 1, 1990. Thus, District 6, as Intervenor in that proceeding, had ample opportunity to raise the issue of 1115's alleged disqualifying misconduct in the representation proceeding by way of a motion to reopen hearing or similar petition, even if it felt duty bound to honor the FBI's request to refrain from making these matters public prior to the date of its charge. Yet, as Perry testified on cross-examination, even after he was given permission by the FBI to give limited testimony about 1115's alleged conduct, sometime in 1990, neither he nor any other representative of District 6 ever provided the information in its possession to the Regional Director for Region 22 in connection with the Cedar Grove representation proceeding. Furthermore, by virtue of its receipt of a copy of this charge, it having been named as one of nine employers whose employees were adversely affected by 1115's misconduct in separate representation proceedings, including Case 22–RC–10234, Cedar Grove was then in possession of the alleged facts which it now seeks to assert as an affirmative defense in this case, and like District 6, it took no action to raise 1115's alleged disqualifying conduct while the underlying representation case was still pending.

The charge in Case 29–CB–7618 alleges a course of conduct commencing on or about November 19, 1989, by which 1115, in violation of Section 8(b)(1)(A), coerced, threatened, or otherwise interfered with the Section 7 rights of employees of the nine named employers.

By a three-page letter dated April 30, 1991, Regional Director Alvin Blyer for Region 29 dismissed the charge, concluding that because there was insufficient evidence of any violation of the Act, further proceedings were not warranted at this time.

In the dismissal letter, the substance of the charge was recited as an alleged offer by 1115 to purchase from District 6 its collective-bargaining rights with respect to certain employees in the health care field. As part of 1115's conduct, if District 6 declined the offer to ''sell,'' 1115 indicated its intent to secure such rights by organizing shops represented by District 6 and it had already done so. 1115 was also alleged to have accepted employer assistance in this conduct, through the participation of a management attorney in the negotiations between the two unions.

[4] A different local than the labor organization, 1115, which Perry asserts engaged in the alleged unlawful attempt to ''buy'' District 6.

In analyzing the evidence submitted, Director Blyer noted that it was not clearly established that any monetary offer made by 1115 was personal to any district official but could be equally interpreted as an offer to recompense District 6 for the financial loss of abandoning its bargaining rights. As to the alleged unlawful ''transferral'' of bargaining rights, there was no evidence that 1115 had an intent other than to organize those shops on District 6's renunciation of its bargaining rights. In filing petitions in such shops, there was insufficient evidence to show that 1115 had any intent other than to represent the employees for whom they might obtain bargaining rights.

Director Blyer went on to note that Section 8(b)(1)(A), unlike Section 8(a)(1) and (2) does not refer to ''interference'' with Section 7 rights and requires a showing of actual restraint or coercion of employee rights, not met by 1115's unsuccessful attempt in persuading District 6 to abandon its representation rights. Neither did the management attorney's participation in the discussions amount to unlawful acceptance of employer assistance since it was unclear that he acted as agent of any employer, he did not participate after the initial meetings, and, in any event, there is no legal authority for holding a Union in violation of Section 8(b)(1)(A) for ''accepting'' assistance which did not result in its recognition.

District 6's appeal of the dismissal was denied in a letter dated July 10, 1991, from the General Counsel's Office of Appeals. In the letter Mary M. Shanklen, director of the Office of Appeals, noted first that the conduct in the instant case could not by itself be found to constitute unlawful restraint or coercion of employees within the meaning of Section 8(b)(1)(A). Interestingly, Shanklin goes on, ''Nor was it converted into an unfair labor practice by Local 1115's threats of physical harm to Mr. Jarema which have been alleged as violative of the Act in a Complaint in Case No. 29–CB–7911.'' It is apparent that District 6 brought the matters alleged in the consolidated CB case to the attention of General Counsel on its appeal to strengthen its CA case by attempting to show a related course of conduct which resulted in physical threats, an argument very much like that which Cedar Grove and District 6 are attempting to make here, although both are seeking a different remedy, 1115's disqualification from serving as certified representative rather than liability for the commission of unfair labor practices.

While its charge in Case 29–CB–7618 was pending, on October 5, 1990, in a ruling, the Board's Associate Executive Secretary, by direction of the Board, denied District 6's motion to hold in abeyance all representation petitions filed by 1115 seeking to represent employees currently represented by District 6. More recently, on November 16, 1992, the Board's Associate Executive Secretary, by direction of the Board, denied as lacking in merit another motion filed by District 6 seeking to stay all Region 4, 22, and 29 proceedings affecting District 6 pending completion of current NLRB and FBI investigations.[5]

[5] In a footnote, the Board noted it had been administratively advised that the General Counsel had denied District 6's claim of bias on the part of Region 29 and that the FBI had concluded its investigation and plans to take no action. These were among the grounds asserted by District 6 for the relief it sought.

Earlier, shortly before dismissal of its charge in Case 29–CB–7618 by letter dated March 28, 1991, District 6 had submitted a supplemental position statement to the Division of Advice of the Office of General Counsel in which it had sought, inter alia, similar relief from General Counsel, alleging that 1115 should not be certified in any of the District 6 shops in which it campaigned for election, after the buyout attempt failed, and should have its certification revoked where already obtained. District 6 argued, as it does here, that 1115's organizational campaigns were tainted by its prior unlawful attempt to buy out District 6, and that 1115 does not have the single-minded purpose of protecting and advancing the interests of the employees in those shops, but has as its primary purpose the destruction of District 6.

In an advice memo dated April 22, 1991, from Robert E. Allen, Associate General Counsel, Division of Advice to Regional Director Blyer, Region 29, in which the Region was advised to dismiss the charge, absent withdrawal, the relief was rejected in footnote 6. The memorandum noted that even if the buyout attempt was unlawful under criminal statutes, such conduct by officers of a labor organization is not cognizable under the Act and does not ipso facto make the Union's organizing efforts unlawful or preclude its certification, citing *Alto Plastics Mfg. Corp*., 136 NLRB 850, 853–854 (1962). The memorandum further noted that so long as a union exists at least in part for the purpose of dealing with employers concerning terms and conditions of employment, it is a Section 2(5) labor organization which can be certified if duly elected by the employees, citing *Harrah's Marina Hotel & Casino*, 267 NLRB 1007 fn. 2 (1983). Finally, the advise memo referred to the absence of evidence that 1115—a bonafide labor organization that has represented employees in many units—has undertaken to organize District 6's shops wholly for the purpose of destroying District 6. The dismissal of the charge followed on April 30, 1991.

On the adjourned date for resumption of the now consolidated CA-CB proceeding, Jarema testified as a witness called by Intervenor District 6. He recalled being asked in 1985 or 1986 to accompany Perry to a meeting held at Morris Tuchman's office, which Alex De Laurentis also attended. During the course of the meeting De Laurentis stated he was willing to buy District 6 for $1.5 million. Perry became upset and responded that this Union is not for sale, let's get out of here. De Laurentis then said it could be done one way or the other. We can raid you all over the place, use the Board, etc. or you can take the price. During this exchange Tuchman tried to act as a mediator. De Laurentis did not explain how he arrived at the figure, but said that the money would be paid to Perry.

Several weeks later, at the suggestion or urging of Perry, Jarema met with several agents from the U.S. Department of Labor who asked him to set up a meeting with De Laurentis to test the validity of the earlier offer and to record the meeting by wearing a wire. Jarema agreed. He telephoned De Laurentis, told him he thought he could deliver, and asked for a meeting. Further phone calls were held, all of which were recorded.

A meeting was finally held with De Laurentis at a diner on Route 35 in Red Bank, New Jersey. Prior to the meeting the government agents placed a recording device on Jarema's body. At the meeting, De Laurentis expressed concern about Perry's approval of any deal in light of his earlier strongly voiced opposition and raised a question about Jarema's ability to deliver on any understanding. De Laurentis wanted District 6 to deliver both members and employers. Payment would be at a rate of $10 per member per month for a year. On the basis of a District 6 membership of 8000, suggested by Jarema, the payment would total $800,000. De Laurentis offered Jarema a position with 1115 if he could bring both the members and employers into 1115's facility. How this was to be accomplished was not explained. As to the method of payment, payment would be by check as the members and employers were brought in. Jarema first had noted that De Laurentis had described how ''we'' would be paid and then defined the ''we'' as being William Perry, without first specifically attributing the payee as being Perry in his individual capacity.

At the conclusion of the meeting, the Department of Labor agents retrieved the recorded tape a short distance from the diner. Shortly afterward De Laurentis passed away and District 6's pursuit of the matter or any governmental interest was dropped.

According to Jarema, following a period during which 1115 raided District 6 by filing representation petitions and seeking to oust District 6 from a number of nursing homes in New Jersey, Perry asked if he would talk with an FBI agent to try and reevaluate 1115's offer.

As a result of Jarema's meeting with an FBI agent, he agreed to approach Morris Tuchman to see if there was any current interest in the buyout of District 6 and at what price. On the occasion of a Board proceeding in Region 22, in Newark, New Jersey, in November 1989, in which both District 6 and an employer represented by Morris Tuchman were involved, Jarema, who had a listening device in his attache case, placed there by the FBI, asked Tuchman if he recalled the meeting in his office attended by De Laurentis, Perry, and himself where Alex offered to buy the Union for $1.5 million. Tuchman told him his numbers were off. Your numbers are only about 8000 and the figure is closer to $800,000. Tuchman used a calculator, to compute the amount on the basis of the $10-per-member ratio. Jarema asked if he thought the offer still stands. Tuchman said he would find out.

Some days later, Tuchman informed Jarema in a recorded telephone call that 1115 was interested, and he should contact Raoul Aldrich, De Laurentis' successor as director of organization. Jarema telephoned Aldrich from his taped phone and said I assume you know why I'm calling, Morris Tuchman must have spoken to you. Aldrich said he knew but wanted to discuss the matter further in person. The following week a meeting was arranged at 1115 headquarters in Westbury, Long Island. Jarema wore a recording device planted by an FBI agent. In Aldrich's office, Jarema said he had a meeting with your predecessor De Laurentis a couple of years ago covering his desire to purchase Local 6. Aldrich replied that he thought Alex left some notes along those lines. Jarema said, ''I know you people are raiding the hell out of us right now.'' Aldrich replied that's part of the overall thing. During cross-examination, Jarema added that Aldrich said it would be cheaper buying the Union as opposed to continuing raiding situation which cost him a lot of money in attorney fees. The talk then turned to specifics. Aldrich asked for the number of District 6 nursing homes under contract unencumbered by 1115's efforts. Jarema told him there

were approximately 23. Aldrich next sought a breakdown of the nursing home personnel into nonmedical and medical. Aldrich expressed interest only in the medical personnel which totalled approximately 4000 members. Aldrich offered to pay $10 per member per month for a year, totalling $400,000. Aldrich also expressed interest in the home attendant employees District 6 represented in bargaining relationship with an employer, Human Development Association, in a growing area of the medical field. Aldrich suggested putting together a package including the nonmedical people, but said he'd have to talk first to Mickey Sackman, 1115 president.

On a later taped return call to Aldrich, a meeting was set up with Sackman for sometime in January 1990. Again, Jarema was wired by the FBI before the meeting. On his arrival at 1115's offices, Aldrich introduced Jarema to Sackman in his own office, and then left.

For the first 20 minutes they engaged in small talk. Then they discussed the purchase. Sackman said Raoul left some numbers here, however, they are completely out of the ballpark. We do not pay 1 year, we will pay a maximum of 6 months. He then said let me call my attorney. Sackman confirmed it was Richard Greenspan, 1115 and 1115-New Jersey counsel, in the instant proceeding. As Sackman made the call, Jarema said, ask him whether we have to get cards. Sackman spoke to the party on the line by saying Richard, didn't we do something recently in purchasing a union. Tell me if my numbers are correct. We don't pay a year on the dues factor, we only pay six months, am I correct? Sackman listened and then responded yes, yes, right. That's what I'm telling this man. How about cards? Sackman listened, then said No, there is no need for cards, right. What else do we need from him?

Sackman hung up and told Jarema they would need another meeting to which he should bring current copies of all his contracts. Jarema responded, you know that the numbers have changed dramatically. I have another party I have got to talk to here and I'll be back to you. A tentative meeting was scheduled for the following week, at which 1115's lawyer and accountant would be present and would explain the necessary arrangements. Sackman explained that a separate office would be set up within 1115 to be manned by a District 6 representative ''and as the members and the employers were brought in District 6 or Local 6 would get paid by the amount of people they brought into this special set up.'' (Tr. 207.) After Jarema repeated that ''we would get paid,'' he now responded to a leading question of his own counsel that the money would go to Bill Perry, personally. In his unvarnished uninterrupted initial narrative as noted, the payments were to be made to District 6. Jarema at no time attributed any statements to De Laurentis, Aldrich, or Sackman promising personal payments to Perry and District 6 counsel never asked Jarema whether the 1115 representatives with whom he met had said it. I find that no private moneys were promised to Perry in the course of the meetings Jarema attended. None of the alleged tapes made of his various interchanges were produced to corroborate or clarify 1115's position on this matter. Jarema did repeat that each of the three 1115 representatives with whom he met insisted on District 6 delivering both its members and the employers, or there was no deal.

After the meeting the FBI returned their listening device. Thereafter, Jarema received 10 to 15 telephone calls from Sackman which he did not return at the instructions of the FBI. Some 8 months later, Jarema received the telephone calls which are on the subject of the CB complaint.

Early in his cross-examination by counsel for General Counsel, Jarema acknowledged that, contrary to his testimony attributing to De Laurentis a response to Perry's rejection of his offer to buy District 6 members and shops to the effect he would take whatever measures were necessary to accomplish that result, by raiding for example, in an affidavit given to Region 29 on May 29, 1990, he didn't think De Laurentis said what would happen if Perry refused the offer. In a separate written response to a question posed by District 6 counsel on March 5, 1990, Jarema described De Laurentis' reaction to Perry's refusal to entertain a buyout of District 6 as ''He sort of backed off and that was the end of the meeting.'' I am not convinced that Jarema's recollection was better 2 years later when in early March 1992, he attributed the calculated response to De Laurentis that he would achieve his objective one way or another, including through raiding. Significantly, Perry did not testify to any De Laurentis' response before both he and Jarema left the meeting. Jarema's credibility thus has been seriously compromised.

It is also noteworthy that in a number of important respects Jarema's recital differs from Perry's. In Perry's version, Jarema informed him 1-1/2 years later that he had been approached by 1115 to consummate the buyout, while Jarema, who was not present for Perry's testimony, testified it was Perry who later approached him to meet FBI agents to seek to resurrect the deal without any intervening approach by 1115. As Jarema testified, ''I was never approached by 1115, me, individually.'' (Tr. 316.) This difference is significant, because if Jarema is to be credited on this point, nothing had happened between 1985 or 1986 and 1989, to indicate that 1115 was actively pursuing its original buyout proposal, and only District 6's own activity in feigning renewed interest, led to the meetings Jarema held with Aldrich and then Sackman. District 6's contention that 1115's raiding activity among District 6 shops show that 1115 carried out its threat to punish its rejection of the buyout plan is not established by the facts. The series of a dozen representation proceedings in which 1115 or 1115-New Jersey filed petitions to become bargaining representative in place of District 6, offered in evidence by 1115-New Jersey, shows that one petition had been filed as early as 1982, years before 1115 made its offer, four others had been filed during 1990, after Jarema sought to arrange a meeting with 1115 commencing in November 1989, and only two were filed in the period 1987 and 1988. Furthermore, the results of the elections held in these proceedings, show overwhelming support for 1115 among the employees who participated as against very meager support for District 6, leading invariably to 1115's certification as exclusive bargaining representative, from which one may reasonably conclude that legitimate employee support existed for 1115 to seek to supplant District 6 as representative and that 1115 was motivated, at least in part, by the perceived needs and/or desires of these employees in processing and participating in these proceedings.

Another significant difference between the two involved the source of any charges of criminal wrongdoing which instigated the FBI investigation. Perry testified clearly that it was Jarema who had made the charges to the FBI (Tr. 91–92). Yet, when confronted with this testimony Jarema repeated that he never contacted the FBI, that they contacted him, and that he never made any charges to them. (Tr. 326.) Such a conflict serves to undermine Perry's credibility.

Another difference between Perry and Jarema had to do with the length of the initial meeting at Tuchman's office, with De Laurentis, Jarema claimed it was 40 minutes long while Perry said it lasted only 10 to 15 minutes. Jarema also for the first time on cross-examination by 1115-New Jersey counsel acknowledged that Perry had stated at this meeting that District 6 had 15,000 members, a statement which led De Laurentis to indicate that on the basis of $10 per member per month, he was willing to offer $1.5 million for District 6 members and shops. Perry himself did not testify that any money offer was made by De Laurentis. In fact, District 6 had apparently listed only 3500 members on a Labor Organization Annual Report (LM-2) for 1986–1987 it had filed with the U.S. Department of Labor. Thus, the suggestion attributed to Perry of a membership roll four times its actual size is an example of a misleading misstatement which itself may have contributed to 1115's further pursuit of a proposal which it might otherwise have ceased to pursue.

Jarema himself agreed on cross-examination that he had given information to Aldrich about the size of the District 6 membership which was false, apparently double the members listed on the 1986–1987 LM-2. In doing so, he had not followed FBI advice but had lied on his own. When pressed about this Jarema stated he was prepared to lie when his livelihood was at stake but it wasn't at stake during his testimony. Jarema did not testify that his lying to Aldrich was justified by concern about his job.

Jarema also on cross-examination did not recall De Laurentis offering to pay money under the table.

Jarema also repeated that De Laurentis did not explain how the transfer of members and employers would be accomplished. When he was then asked if he was familiar with union merger or affiliation procedures and whether they could be accomplished without membership referendum, Jarema expressed ignorance. However, when Jarema was later asked whether it wasn't true that when Aldrich was using the word purchase, he didn't know whether Aldrich was talking about a merger, an affiliation or a purchase, he replied that there was no doubt in his mind that Aldrich was talking about an outright purchase. Yet Jarema did not attribute such unambiguous language or intention to Aldrich. It is also apparent from Sackman's intention to have both his attorney and accountant attend a further meeting when the arrangement would be formalized, at which District 6 was also to produce LM-2s, contracts, and its constitution, that 1115 had something else in mind, which would seek to conform to legal standards, yet provide Distict 6 with compensation for relinquishing its status as exclusive representative at the nursing homes to be involved in the transaction.

Jarema also now added that in his discussion with Sackman, it was proposed that a District 6 representative be assigned to the office to be set up within the 1115 facility to administer the turnover of members and collective-bargaining agreements and to receive the installment payments. That office also may have been designated as a separate local and Jarema had used those words previously to describe it. The question of who at 1115, whether the District 6 agent, or another would continue to service the District 6 shops brought in, was not discussed. Further, Jarema now added that Sackman rejected a demand he made that District 6 be paid money up front after consulting his attorney by telephone. It is possible that Sackman also promised Jarema a job at 1115 anytime he wanted.

### B. *Case 29–CB–7911*

#### The Presentation of the General Counsel's Case-in-Chief

Jarema was the chief witness for General Counsel. He testified that on or about October 2 or 3, 1990, he received a telephone call from a man who said, ''Jarema, I thought you had a deal with the guy in Florida. Why don't you cut the nonsense and sit down and try to work this thing out.'' Jarema asked who is this and what is this about. The caller responded, ''it is about the 1115 matter.'' The conversation ended at that point. Jarema testified that he recognized the voice as belonging to 1115 Secretary-Treasurer Raoul Aldrich, based on approximately 10 telephone calls he had with Aldrich prior to this date.

Jarema continued, that on October 11 or 12, 1990, he received another telephone call from a caller he suspected to be Aldrich from his voice. The caller said, ''why don't you stop this nonsense with the Labor Board or else.'' Jarema asked, ''or else what?'' The caller responded, ''you will get your legs broken.'' This exchange ended the call. Subsequently, on October 24 or 25, 1990, Jarema received a telephone call from a male caller whose voice he could not place and which was muffled. There was also no discernable accent to the voice. The caller said, ''you better develop amnesia with your testimony appearing before the Labor Board.'' Jarema asked, ''who is this? What is this all about?'' The caller then said, ''Listen, people like you wind up in wooden boxes.''

The General Counsel offered the testimony relating to this last telephone conversation in support of the complaint allegation relating to the earlier one, since it involved the same subject matter, and seeks an inference to be drawn that it was the same caller who Jarema had identified as being Aldrich. I received the testimony at the time over objection grounded on the failure of the witness to identify the caller or show his relationship to the Respondent 1115, leaving open the possibility that in the absence of proof linking this caller to the one who made the call on October 11 or 12, I would not rely on it in evaluating whether General Counsel had established the identity of the earlier caller.

Jarema reported to Perry, in the presence of two other business agents, that he had received three threatening phone calls. Two he believed were made by Raoul Aldrich. The third caller he didn't know, but they unnerved him. They were made concerning his testimony before the Labor Board on the 1115 situation.

In December 1990, Jarema visited Oceanside Convalescence and Rehabilitation Center in Atlantic City, a shop under contract with District 6 and still under its jurisdiction at the time of his testimony on March 5, 1992. By November 1990 Jarema had ceased servicing employees in New Jersey

facilities represented by District 6. But he was also treasurer of the District 6 Credit Union, and in that capacity he was responding to an earlier request from Oceanside employees to visit the facility to explain the benefits of membership, the procedure of becoming a member and to assist them in completing loan applications. In responding to these employees and in communicating with other shops, Jarema had informed them he would not provide them with specific arrival dates and times because he had been threatened because of his testimony at the Board. In meeting with a few employees when he arrived at Oceanside, Jarema explained that he had received threatening phone calls from 1115, he believed it to be, due to his testimony at the Labor Board and that was why he had been unwilling to set up a specific date and time of his arrival so a membership meeting could be arranged. He was afraid that if he scheduled a specific appointment, the person who threatened him would find out and, in effect, follow through on it. Jarema explained this to employees gathered in the Oceanside cafeteria. He identified Brenda Beverly, Carmela Love, and a third female employee named Jones.

During his cross-examination by 1115 counsel, Jarema explained that his prior phone conversation with Aldrich had taken place starting in November 1989 on the occasion of his contacts to arrange an initial meeting and then later when he sought to make arrangements with Aldrich to set up the January 1990 meeting with Sackman. Between January and October 1990 he had no contact with Aldrich.

Jarema had received the October 2 or 3 call at his home in New Jersey. He could not recall if he had provided Aldrich with his home telephone number but it was listed in the directory.

When asked to agree that Aldrich is a Spanish-speaking individual who speaks English with an accent, Jarema would not, describing the voice as distinctive, but not containing a spanish accent unlike the District 6 Hispanic members who did speak with an Hispanic accent. In Jarema's view, the voice he described had an ''east sidish'' character, but he was hard pressed to define that phrase. When asked if Aldrich used slang, or curse words, Jarema said he did not to his knowledge. The voice on the first two calls he received in October was the same. Jarema later noted that he was 99 percent certain it was Aldrich and he would be able to recognize Aldrich's voice if he heard it now. The voice on the third call was entirely different and was muffled. On none of the calls had Jarema identified himself.

Although he believed, especially after the third call, that he had received a serious threat to himself personally, Jarema did not report the matter to the local police because he believed the caller, who was on the line for only a minute or so each time, could not be traced. It was Perry who suggested he go to the Labor Board and file a charge. Jarema understood that such a charge would be helpful to District 6's position in several pending cases.

The initial charge which Jarema signed and filed on behalf of District 6 alleging the threat to his person as violative of Section 8(b)(1)(A) was filed on October 26, 1990, in Case 29–CB–7791. That charge was dismissed by Regional Director Blyer because of insufficient evidence of violation by letter to District 6 dated December 21, 1990. It appears that prior to dismissal District 6 had not produced corroboration from employees that Jarema had told them about the nature and source of the threats to his person. Upon the filing of new charges, in Case 29–CB–7911, on February 21, 1991, and after employees provided the Region with corroboration of Jarema's narrative that he advised them of the threat, complaint issued on June 17, 1991.

Two employees testified in support of the complaint. Brenda Beverly was a certified nursing assistant (CNA) employed at the Oceanside facility in Atlantic City, New Jersey. She was a member and chief shop steward of District 6 at that facility. In the period November to December 1990, Steve Jarema met with Beverly and other employees in the employees' dining room. Besides Beverly, present were Carmela Love, Yvonne Jones, and Brendis Breems. Jarema told then he was in the area and decided to stop in. Previously Beverly had asked Jarema by phone to stop by to speak to employees about the credit union. Jarema added at the time that he hadn't been in the area or hadn't returned Beverly's calls because he had been threatened by another union, 1115. Beverly asked him what happened, but Jarema didn't go into detail, he didn't say anything else about the threat.

Later in the day Beverly asked Carmela Love if she heard about Steve Jarema being threatened. Although present on Jarema's visit, Beverly wasn't sure if she had heard her remarks. Love said she had not.

At the general membership meeting of Oceanside employees held at the facility on December 1990, Beverly, with Love present, heard District 6 Agents Francis Wynn and Essie Moore mention that Steve Jarema had been threatened by another union, 1115, because he had gone to the National Labor Relations Board.

Carmela Love testified she was employed as a CNA by Oceanside at its Atlantic City facility. She was a member and assistant shop steward of District 6 for 3 to 4 years. At the meeting with Jarema in the employees' lunchroom in November and December 1990, they discussed the credit union and the possibility of organizing in the area, among other things. When he he was asked about what was happening with him in New York, he said he had been threatened by Local 1115. Later in the day, Love discussed the threat with Beverly, but could not recall the details of the conversation.

In December 1990, she and Beverly met with Business Agents Wynn and Moore on the occasion of their visit to the facility to conduct a general union meeting. The stewards met the agents separately to discuss grievances and employee problems. At the time, the agents told them that Steve Jarema had been threatened by Local 1115 because he gave testimony at the Labor Board.

Aldrich was called to testify by 1115 in its defense. He described the relations and differences between the two Respondent Unions in these consolidated cases. He was secretary-treasurer of both 1115 and 1115 New Jersey. Jay Sackman, Mickey Sackman's son, is president of 1115 New Jersey. Alex De Laurentis' widow, Maggie De Laurentis, is president of 1115. Mickey Sackman, as noted earlier, is general president of the District Council 1115, the Union's intermediate body, with which 1115 and 1115-New Jersey, and four other local unions are affiliated as its divisions. Besides Aldrich, another common officer of 1115 and 1115 New Jersey is Dennis Romano, who is vice president of 1115-New Jersey and recording secretary of 1115.

1115 and 1115-New Jersey each have different geographic jurisdictions, 1115 operating in the New York City area and 1115-New Jersey covering northern New Jersey. They each have separate collective-bargaining agreements and relationships with employers in the nursing home industry.

Aldrich testified that he was born in Cuba, graduated from high school there, and left for the United States at age 17. Both he and his wife, who is from Costa Rica, are Spanish-speaking, fluent in Spanish, and they speak Spanish at home. Later testimony revealed that Aldrich had received an undergraduate degree in political science from the State University of New York (SUNY) and had taken special training in union negotiations and leadership at Cornell University. As I heard Aldrich's voice, it appeared that he spoke with precision, in a cultivated manner, with very little traces of a Spanish or Hispanic accent.

While 1115 counsel drew from Aldrich that he never lived in in New York City or its lower East Side, but had lived on Long Island for the past 34 or 35 years, it appears that what Jarema may have been referring to when he described the voice he heard, as ''east sidish,'' was that the speaker spoke in a refined manner. However, the fine traces of a spanish accent were present as I heard Aldrich testify, and Jarema had denied the voice he heard had any spanish intonation or inflection at all.

Aldrich admitted he knew Jarema, having met him twice, and that he spoke with Jarema no more than three times by telephone. The first time he placed a call to his office in late 1989 and left a message. Jarema called him back within that week, and during a conversation which lasted no more than 3 or 4 minutes they had set up a meeting. After the meeting, he spoke by phone with Jarema again to firm up a meeting with Sackman.

Aldrich denied knowing where Jarema lives and he never received Jarema's house address or telephone number from him. He denied ever calling Jarema at his home. Because of the sequestration order, Aldrich was not present during the earlier proceedings.

Aldrich denied making any of the remarks attributed to him by Jarema during the October 2 or 3 and October 11 or 12, 1990 telephone conversations. In fact, he never spoke with Jarema again, after introducing him to Sackman on the occasion of Jarema's visit to the 1115 headquarters in early 1990. He also denied calling Jarema on October 24 or 25 when Jarema claimed he received a third telephone call from a caller with a muffled voice.

On cross-examination, Aldrich acknowledged meeting with Jarema once toward the end of 1989 and speaking with him then for 15 or 20 minutes. At that time Jarema was looking for the possibility of having District 6 affiliate with 1115 and he, Aldrich, had offered Jarema a job.

During his direct examination, in denying making the threatening remarks attributed to him during the October 11 or 12 conversation, Aldrich sought to show he never spoke with Jarema on that date by making the point that he did not even make small talk with him, never mind threatening him, not even to say hi, how are you doing? How's the weather down where you are? When pressed about what he meant by the phrase, ''down where you are'' Aldrich at first was evasive and then denied any implication as to location arising from this testimony. The phrase was meant to show his lack of interest in even small talk with Jarema. The record shows, however, that Jarema resides in Piscataway, New Jersey, and Aldrich resides on Long Island. Aldrich also did not recall whether in the second conversation he called from his office in Westbury or on his car telephone.

Aldrich also admitted having seen and having become aware of the charge District 6 made against 1115 in Case 29–CB–7618 on May 3, 1990. He also was aware of the allegation that 1115 was making an offer to purchase District 6 and to undermine the rights of employees and employers. He provided the Regional Office with a statement relating to the conversation he had held with Jarema in his office in response to the charge. He denied that 1115 had engaged in any unlawful conduct to intimidate or coerce employees.

Aldrich at first testified that he first became aware that Jarema had been wired by Federal authorities for his meetings with himself and Sackman a few days or a week before his testimony, but then testified he had learned that District 6 had gone to the FBI when District 6 first distributed a leaflet claiming that 1115 was being investigated by the FBI about 3 or 4 weeks before his testimony.

Aldrich also acknowledged that Mickey Sackman, the general president of District Counsel 1115, resides in Florida, although he often spent time at the Westbury office of the District Council.

When Aldrich learned of the claims Jarema and District 6 were making, by way of the unfair labor practice charge and leaflet about 1115's fraudulent conduct toward District 6 and employees, he felt indignation and anger. He believed that District 6 was reacting to 1115's success in the representation elections in units in which District 6 had been the incumbent, in some of which it received no votes at all.

Upon my review of the dramatically opposed accounts of Jarema and Aldrich as to their telephone conversations, Jarema alleging threatening remarks and Aldrich denying having made the telephone calls at all, I find Jarema's account to be more credible.

While Jarema exaggerated the number of times they had spoken by telephone prior to early October 1990, I find that his account of the calls he received in October and his identification of the caller are believable. Jarema's identification of Aldrich as his caller is a sufficient voice identification as required under the Federal Rules of Evidence. (See Fed.R.Evid. Sec. 901(b)(5).) At the time, District 6, Jarema in particular, had abruptly discontinued their discussions with 1115 about the buy out money months ago. Since that time, by the spring or summer of 1990, Aldrich had learned of District 6 and Jarema's allegations of unlawful conduct by 1115 through his own and Sackman's actions in seeking to make a cash, under-the-table purchase of District 6 members and shops in violation of the Act. While Aldrich may not have been aware by October of District's complaint to the FBI and taping of its encounters with 1115, he was certainly alerted by then through District 6's charge to a fraudulent inducement of 1115 to make offers to purchase District 6 shops. It was fraudulent because District 6 never intended to fulfill its end of a bargain but rather was seeking to entrap 1115. On the record Aldrich expressed his resentment and anger at District 6's role in the affair, during which it was represented by Jarema in all its aspects. The ULP charge in Case 29–CB–7618 was still pending by October 1990, and was not dismissed until April 30, 1991. On October 5, 1990, the Board denied District 6's motion to hold in abeyance all

representation petitions filed by 1115 seeking to represent employees currently represented by District 6. Richard Greenspan, 1115's attorney, received a copy of this ruling. I may infer that Aldrich, as a high officer of 1115 was privy to this ruling as well as District 6's motion for this relief which had been previously pending. Thus, Aldrich was not only on notice of District 6's charge against 1115, but also the lengths to which it was seeking to go to defeat 1115's raiding activity against it. Clearly, Aldrich had motive to act.

In evading a direct answer about his use of the phrase ''down where you are'' in his testimony, I find Aldrich was attempting to shield his knowledge of Jarema's residence location in New Jersey which came out accidentally in his use of the phrase.

This is not the first time 1115 agents have engaged in similar intimidating conduct toward employees. In *Windsor Castle Health Care Facilities*, 310 NLRB 579 (1993), 1115 Representative Steve Maritas accompanied by unidentified tall, husky men engaged in intimidating and physically threatening conduct toward nursing home employees on nursing home premises during work hours in an unlawful attempt to secure designation cards during an employer assisted organizing campaign. Id. at 590–591. That conduct took place earlier in the same year, 1990, as the telephone calls alleged in the instant case. See *Teamsters Local 812 (Sound Distributing)*, 307 NLRB 1267 fn. 2 (1992).

I do not find Jarema's failure to pick up Aldrich's faint Hispanic accent a fatal flaw in his identification as it was a very minor aspect of Aldrich's voice and Jarema's confidence in his ability to identify even a 1-1/2 years later the distinctive voice he heard is persuasive. Since I find that all three telephone calls were indeed made and received by Jarema at his home, the substance of those calls are sufficient in themselves to provide prima facie proof of the identity of the caller based on circumstantial evidence. *Iron Workers Local 433 (United Steel)*, 280 NLRB 1325, 1333 (1986), citing *U.S. v. McMillan*, 508 F.2d 101 (8th Cir. 1974), among other cases. Only Aldrich, aside from Mickey Sackman, was privy to Jarema's role in past contacts with 1115. The caller identified Jarema's role in providing testimony under the Act to the Labor Board, referred to the 1115 matter and a deal the caller thought Jarema had with the guy in Florida, clearly Sackman. The substance of the calls thus provides strong circumstantial evidence of the identity of the caller as being Aldrich. Jarema's voice identification based on prior conversations with him by telephone and in person, provides independent proof of identification. While Jarema's credibility is suspect on certain facets of his testimony relating to his in person conversations with De Laurentis, Aldrich and Sackman, to which he testified in Case 22–CA–17729, I am prepared to credit him here, that Aldrich made the threatening remarks attributed to him. I further find that the third call is sufficiently related to the first two, although independent verification of identity cannot be made because of a disguising of the voice, to warrant my finding that Aldrich or another 1115 agent was continuing the intimidating and threatening conduct toward Jarema. The call lends weight and credibility to the evidence pointing toward Aldrich as the threatening voice on the first two telephone conversations

## Analysis and Conclusions

### The complaint in Case 29–CB–7911

While having identified Aldrich as the individual who made the two telephone calls in early October culminating in the threat of physical harm to Jarema on the second call, the issue remains to be resolved whether Jarema's and other business agents' later disclosure of this threat to employees is sufficient to conclude that 1115 had thereby restrained and coerced employees in the exercise of rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act.

It is a basic principle of the Act, that union threats to inflict bodily harm made to employees or to supervisors in the presence of employees with the purpose of inducing support of the union are violative of Section 8(b)(1)(A) of the Act. See *Nassau Insurance Co*., 280 NLRB 878, 880 (1986). Furthermore, as noted by the Board in *Meat Packers Union (Geo. Hormel & Co.)*, 287 NLRB 720, 721 at fn. 5 (1987), ''It is well established Board law that conduct directed against nonemployee third parties can violate Section 8(b)(1)(A) where such conduct, as here, became or was sure to become known to employees and would reasonably tend to restrain or coerce them in the exercise of Sec. 7 rights [citations omitted].''

It was reasonable for Aldrich to have foreseen that his attempt to intimidate Jarema and District 6 from continuing their efforts to seek Board relief from 1115's buyout offer, including its removal from its status as bargaining agent in shops where it supplanted District 6, would not result in District 6 abandoning its efforts and that employees with whom Jarema had a continuing relationship, among others, and also including fellow business agents, would learn of the threat. Aldrich should have been aware from his past dealings with Jarema that District 6 would seek the widest publicity of the threat and attempt to capitalize on it by filing the instant charge, for example, and using it to strengthen its and Cedar Grove's claim that 1115 had forfeited its rights to Board certification. See, e.g., *Furniture Workers Local 140 (Brooklyn Spring Corp.)*, 113 NLRB 815, 822 (1955).

Under the above-cited principles, contrary to 1115's argument in its brief, there is no requirement that the employees who learn of the threat have to have had some involvement with 1115. It is sufficient, also contrary to 1115's contention at pages 24–25 of its brief, that Aldrich's remarks would reasonably tend to restrain or coerce employees in the exercise of Section 7 rights. *Meat Packers Union*, supra. Under the Board's longstanding test, if the objectional conduct had the natural and foreseeable effect of coercing employees in the exercise of their rights, it violates Section 8(b)(1)(A). See, e.g., *G & H Towing Co*., 168 NLRB 589, 589, 591 (1967). Respondent 1115 confuses two different concepts in misreading the General Counsel's Advice Memorandum of April 11, 1991, in Case 29–CB–7618, described earlier, as requiring anything more than that the proscribed conduct reasonably tend to restrain or coerce employees. The language in footnote 4 of that memorandum was included only to demonstrate that Section 8(b)(1)(A), unlike Section 8(a)(1), has not been applied broadly or derivatively.

I conclude that the reasonable tendency of Jarema's, Wynn's, and Moore's disclosures to employees Brenda Beverly and Carmela Love, among others, that Jarema had been

threatened by Local 1115 because he went to the National Labor Relations Board and gave testimony at the Labor Board was to restrain and coerce those employees in the exercise of their Section 7 rights under the Act. These disclosures tend to inhibit their utilization of the Board's services and their continued support of District 6, whether or not 1115 had any organizing campaign underway among them or was seeking bargaining rights at the time from their employer.

### The complaint in Cases 22–CA–17729 and 22–CA–17749

The first issue to be dealt with is whether Cedar Grove and District 6 are precluded from raising their affirmative defense to the complaint seeking a bargaining order based on 1115-New Jersey's certification because they could have raised the same matter in the underlying representation proceeding. I have previously demonstrated that by virtue of District 6's charge in Case 29–CB–7618 filed on May 3, 1990, on notice to Cedar Grove, both Cedar Grove and District 6 had ample opportunity to litigate their defense at a time when the underlying representation proceeding was pending before the Region following the Board's April 5, 1990 Decision on Review and Order modifying the Regional Director's unit determination and months before the Regional Director issued a Second Direction of Election on November 1, 1990. That neither of them chose to do so does not privilege them to raise the matter for the first time in the unfair labor practice proceeding seeking to confirm the results of the lengthy representation proceeding. Indeed, District 6, by its pressing of the argument that 1115's allegedly improper conduct in offering to buy District 6 warrants a revocation 1115's certifications at all shops named in the 29–CB–7618 charge, as early as June 11, 1990, in a letter to Regional Director Blyer, proves that District 6 was prepared to timely litigate the defense. It simply chose not to do so in the very representation case—Cedar Grove—pending at the time. While the record does not show Cedar Grove or other employers having received this or or later correspondence between District 6 counsel and the Region, Cedar Grove has not denied its receipt of the charge in which District 6 first presented its theory of defense, timely to have pressed new objections to 1115's certification well before the representation proceeding concluded. It is noteworthy that Cedar Grove counsel chose not to attend the adjourned proceeding in March 1992, at which this issue was argued on the record and the exhibits upon which I rely for its actual notice of the claims relating to the affirmative defense were received in evidence. Neither has Cedar Grove addressed this issue in its posttrial brief. Cedar Grove did raise in its brief its renewed defense to the Board's determination of the unit, a matter which it had initially pressed in the representation proceeding. Needless to say I am bound by the Board's modification of the Regional Director's unit determination to include additional part-time on-call employees in the bargaining unit and that issue, previously litigated, may not be relitigated before me.

The burden of establishing that the allegation regarding the ''sale'' of District 6 is newly discovered or previously unavailable or that special circumstances are present is on the party seeking to overcome its preclusion. *Frye v. Steelworkers Local 3489*, 767 F.2d 1216 (7th Cir. 1985). Cedar Grove has not met the burden and is thus not entitled to relitigate in this proceeding alleging a violation of Section 8(a)(5) an issue which it could have litigated in the prior representation proceeding. *Sea-Jet Trucking Corp*., 304 NLRB 67 (1991); *Wickes Corp*., 261 NLRB 1062 (1982). Neither has Cedar Grove complied with Board Rule Section 102.67(f) which precludes relitigation in any related subsequent ULP proceeding of any issue which was, or could have been raised in the representation proceeding where the party seeking to raise the same has failed to request review. Cedar Grove did not seek review. While District 6 did seek review, its request was denied, and, under another portion of Section 102.67(f) it would also be precluded from relitigating the issue in this proceeding. Cedar Grove also cannot argue that Aldrich's threat when combined with the ''buy'' allegation constitutes a new allegation not previously available to it which justifies its raising it in this proceeding. Such evidence, of a discrete act which I have concluded violated the Act, is insufficient, alone, to warrant the relief sought. See *Holiday Inn Palto Alto*, 298 NLRB 521 at fn. 2 (1990). Its combination, with the allegation previously available to Cedar Grove, does not materially add to the claim of misconduct serious enough to warrant the extraordinary relief of vacating 1115's certification. Furthermore, District 6 was in possession of the facts comprising the threat by mid-October, 1990, at least 2 weeks before the Regional Director's issuance of a Second Direction of Election in the underlying representation case on November 1, 1990, and 3 months before 1115 was certified as bargaining representative on January 15, 1991. To the extent that Cedar Grove has deferred in asserting its defense to District 6, whatever evidence District 6 has presented through its own witnesses may be precluded from affecting the certification because of its, District 6's, failure to expeditiously pursue the misconduct before Region 22. *Holiday Inn Palto Alto*, supra.

Putting aside the procedural handicap Cedar Grove faces here, an examination of the merits of its defense shows that the relief requested is not warranted.

Both charges filed by District 6, the first in Case 29–CB–7618 alleging the attempt to purchase District 6 and the second, in Case 29–CB–7911, consolidated for hearing with Cases 22–CA–17729 and 22–CA–17749, were filed against 1115, and not 1115-New Jersey. As noted earlier, each is a separate labor organization, and, although Aldrich is an officer of both, he is alleged to have been acting only as an agent of 1115 and his conduct is claimed to bind and result in illegal conduct only by 1115 in the consolidated case herein. As the conduct alleged in the affirmative defense as fraudulent in connection with the ''buyout'' attempt was also asserted against 1115, and not 1115-New Jersey, in the charge in Case 29–CB–7618, even if the conduct could rise to the level of disqualifying conduct under the Act sufficient to warrant the extraordinary remedy of removal of the certification in Cedar Grove, it could not affect 1115-New Jersey, the separate union which won the election and was certified as the exclusive bargaining representative.

The branch of the affirmative defense questioning 1115-New Jersey's status as a labor organization is underminded both by the parties' stipulation to its labor organization status under the Act on the record at the hearing in Case 22–RC–10234, as well as by the uncontested testimony of 1115 New Jersey Business Agent Guy Masters that employees partici-

pate in its organization and that it exists for the purpose, in whole or n part, of dealing with employers concerning wages, hours and other terms and conditions of employment. See *Alto Plastics Mfg. Corp*., 136 NLRB 850, 851 (1962). The series of documents relating to 1115-New Jersey's participation in Board representation proceeding and certification as representative received in evidence confirm 1115-New Jersey's labor organization status.

Assuming that the issue was properly raised as a defense in this proceeding, and that the conduct of offering to purchase District 6 shops and employees and the threat of bodily harm to a District agent could be attributed to 1115-New Jersey, I conclude that nothing placed on the record before me justifies revoking its certification as bargaining agent for the Cedar Grove employees.

The Board has justifiably limited the extreme remedy of revocation to those instances in which by its flagrant acts of violence and misconduct in the particular case the Union involved has shown a total lack of interest in representing employees in collective bargaining or concern for promoting the Act's policies of promoting collective bargaining and industrial peace. See *Holiday Inn Palto Alto*, supra at fn. 2; *Gibbs & Cox*, 292 NLRB 757 (1989); *Teamsters Local 703 (Kennicott Bros. Co.)*, 284 NLRB 1125, 1126 (1987); *Union Nacional de Trabajadores (Carborundum Co.)*, 219 NLRB 862 (1975), enfd. 540 F.2d 1 (1st Cir. 1976), cert. denied 429 U.S. 1039 (1977); *Laura Modes Co*., 144 NLRB 1592 (1963). Such is not the case here, as I have noted previously.

The testimony before me confirms that which prior reviewing bodies of the Board have concluded regarding the alleged conduct of 1115 and/or 1115 New Jersey. The Union's series of discussions with Jarema of District 6 could all be interpreted as preliminary attempts to arrange a legitimate transfer of members, treasury and collective-bargaining agreements from District 6 to a newly created local affiliated with 1115 District Council for a consideration representing District 6's partial loss of members and contracts. The testimony most telling in this regard is Jarema's own account of his last meeting with District Council President Mickey Sackman during which these elements were discussed and a proposal was made by Sackman for another meeting to be attended by the Union's attorney and accountant.

Doubt has been cast on the illegality of 1115's actions by the apparent refusal of the FBI or Department of Labor to actively pursue further investigations of the matter. Region 29 which investigated District 6's charge making the same allegation encompassed in Cedar Grove's affirmative defense concluded, on advice, and was affirmed on appeal, that the buyout offer itself did not rise to the level of an unfair labor practice. The full presentation of evidence on the issue that Cedar Grove and District 6 were accorded here has not strengthened their defense or shown sufficient grounds to revoke 1115-New Jersey's certification.

Nothing in the law or the cases I have cited convinces me that 1115's threat of physical harm may not be appropriately remedied by traditional means provided for under the Act.

As Cedar Grove has admitted the certification of 1115-New Jersey, its refusal of the Union's request to bargain with it, as well as its institution of a savings plan, an admitted term and condition of employment, without notice or affording an opportunity to bargain to 1115 New Jersey and its refusal to provide information requested by the Union admittedly relevant and necessary to its obligations as bargaining agent, I conclude that Cedar Grove has refused to bargain in each of these respects in violation of Section 8(a)(1) and (5) of the Act.

Further, by continuing to deduct and remit dues to District 6, the former collective-bargaining representative of its unit employees, Cedar Grove has violated Section 8(a)(1), (2), and (3) of the Act. *Welsbach Electric Corp*., 236 NLRB 503, 515 (1978); *Howard Creations*, 212 NLRB 179, 182–183 (1974).

## CONCLUSIONS OF LAW

1. Respondent Cedar Grove Manor Convalescent Center and Oceanside Convalescence and Rehabilitation Center are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Union, 1115 Nursing Home and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL–CIO; Local 1115, Nursing Home and Hospital Employees, a Division of 1115 District Council, H.E.R.E., AFL–CIO; and District 6, International Union of Industrial, Service, Transportation and Health Employees are each a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time, regular part-time and on-call (who regularly average 4 or more hours of work per week in the last quarter) nursing aides, dietary employees, maintenance employees, housekeepers and laundry employees employed by Respondent Employer at its Cedar Grove, New Jersey facility, excluding all clerical employees, registered nurses, LPNs, technical and professional employees, supervisory cooks, instructors, administrative and executive employees, confidential employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. On or about January 15, 1991, 1115 Nursing Home and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL–CIO, was certified as the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Since that date, the said Union has been the exclusive representative of all employees in the unit found appropriate in Conclusions of Law 3 for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. Since on or about January 15, 1991, by continuing to deduct dues from the pay of unit employees and remitting them to District 6, International Union of Industrial, Service, Transportation and Health Employees, at a time when 1115, Nursing Home and Hospital Employees Union, New Jersey A had been certified as the exclusive representative of the unit employees, the Respondent Employer has rendered, and is rendering unlawful assistance and support to a labor organization, and has discriminated and is discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby encouraging membership in a labor organization, and has thereby been engaging in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act.

6. By refusing to recognize and to bargain with 1115, Nursing Home and Hospital Employees Union, New Jersey A, by failing and refusing to furnish the said Union with in-

formation requested by it which is necessary for, and relevant to, the performance of its functions as the exclusive collective-bargaining representative of the unit described in paragraph 3 above, and by instituting unilaterally and without prior notice to the Union or having afforded it an opportunity to bargain and negotiate with respect to the subject matter or its effects, a savings plan for unit employees containing borrowing privileges, as well as life insurance and retirement benefits, the Respondent Employer has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the said Union, and has thereby been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

7. By threatening a business agent for District 6 with bodily harm, under circumstances where such threats became known to employees of employers with whom District 6 had ongoing bargaining relationships, in order to dissuade the business agent from continuing to give testimony or other evidence before the Board in Case 29–CB–7618, and to discourage access to the Board, Respondent Union, 1115 Nursing Home and Hospital Employees Union, a Division of 1115 District Council, H.E.R.E., AFL–CIO restrained and coerced, and is restraining and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby been engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that the Respondent Employer and Respondent Union have each engaged in certain unfair labor practices, respectively, in violation of Section 8(a)(1), (2), (3), and (5) and 8(b)(1)(A) of the Act, I shall recommend that they each cease and desist therefrom and take certain affirmative action which are necessary to effectuate the the policies of the Act.

I shall recommend that the Respondent Employer, on request, bargain in good faith with 1115 Nursing Home and Hospital Employees Union, New Jersey A as exclusive collective-bargaining representative of its unit employees and embody any understanding reached in a signed agreement. I will further recommend that the Respondent Employer be required to refund to employees dues which have been deducted from their pay and remitted to District 6, with interest thereon to be computed in the manner prescribed in *Florida Steel Corp*., 231 NLRB 651 (1977), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

To ensure that the unit employees are accorded the services of their selected bargaining agent for the period provided by law, I also recommend that the initial period of the certification be construed to begin on the date the Respondent Employer begins to bargain in good faith with the said Union. *Sea-Jet Trucking Corp*., 304 NLRB 67, 68 (1991); *Mar-Jac Poultry Co*., 136 NLRB 785 (1962).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

## ORDER

A. The Respondent, Cedar Grove Manor Convalescent Center, Cedar Grove, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with 1115 Nursing and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL–CIO, as the exclusive representative of our employees in the following unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

> All full-time, regular part-time and on-call (who regularly average four or more hours of work per week in the last quarter) nursing aides, dietary employees, maintenance employees, housekeepers and laundry employees employed by the Employer at its Cedar Grove, New Jersey facility, excluding all clerical employees, registered nurses, LPNs, technical and professional employees, supervisory cooks, instructors, administrative and executive employees, confidential employees, guards and supervisors as defined in the Act.

(b) Refusing to furnish to the Union information requested by it which is necessary for, and relevant to, the performance of its functions as the exclusive collective-bargaining representative of the employees in the unit described in paragraph (a), above.

(c) Unilaterally, and without prior notice to the Union or having afforded it an opportunity to bargain and negotiate with respect to the subject matter or its effects, instituting a savings plan for unit employees, containing borrowing privileges, as well as life insurance and retirement benefits.

(d) Withholding from the pay of any of its unit employees and remitting to District 6, International Union of Industrial, Service, Transportation and Health Employees union dues, at a time when another Union, 1115 Nursing Home and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL–CIO, has been certified as the exclusive collective-bargaining representative of its unit employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse each employee or former employee from whose wages it has deducted and remitted to District 6 union dues on behalf of District 6, the amount of money which has been deducted and remitted, together with interest thereon computed in the manner set forth in the remedy section.

(b) Recognize and, on request, bargain with 1115 Nursing Home and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL–CIO as the collective-bargaining representative of all employees employed by it in the unit described in paragraph 1(a), above.

(c) Furnish to the Union information requested by it which is necessary for, and relevant to, the performance of its func-

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

tions as exclusive collective-bargaining representative in the aforesaid unit.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying all records necessary to analyze and compute the amount of reimbursement to employees, if any, which may be due under paragraph 2(a) of this recommended Order.

(e) Post at its facility in Cedar Grove, New Jersey, copies of the attached notice marked ''Appendix A.''[7] Copies of the notice on forms provided by the Regional Director for Region 22, after being signed by the Respondent Employer's authorized representative, shall be posted by Respondent Employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Employer has taken to comply.

B. The Respondent, Local 1115, Nursing and Hospital Employees, a Division of 1115 District Council, H.E.R.E., AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening a business agent for District 6, International Union of Industrial, Service, Transportation and Health Employees, or any other representative of that or any other Union, with bodily harm under circumstances where such threats became known to employees of employers with whom District 6 or such other Union has ongoing bargaining relationships, with the purpose of dissuading and discouraging the giving of testimony before the Board and to discourage access to the Board.

(b) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its offices and meeting halls copies of the attached notice marked ''Appendix B.''[8] Copies of the notice on forms provided by the Regional Director for Region 22, after being signed by Respondent Union's authorized representative, shall be posted by Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Mail signed copies of the attached notice marked ''Appendix B'' to the Regional Director for posting at the Atlantic City, New Jersey facility of Oceanside Convalescence and Rehabilitation Center.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Union has taken to comply.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[8] See fn. 7, above.

## APPENDIX A

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with 1115 Nursing and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL–CIO as the exclusive representative of our employees in the following unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

> All full-time, regular part-time and on-call (who regularly average four or more hours of work per week in the last quarter) nursing aides, dietary employees, maintenance employees, housekeepers and laundry employees employed by us at our Cedar Grove, New Jersey facility, excluding all clerical employees, registered nurses, LPNs, technical and professional employees, supervisory cooks, intstructors, administrative and executive employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL NOT refuse to furnish to the Union information requested by it which is necessary for, and relevant to, the performance of its functions as the exclusive collective-bargaining representative of our employees in the unit described above.

WE WILL NOT unilaterally, and without prior notice to the Union or having afforded it an opportunity to bargain and negotiate with respect to the subject matter or its effects, institute a savings plan for our unit employees, containing borrowing privileges, as well as life insurance and retirement benefits.

WE WILL NOT withhold from the pay of any of our unit employees and remit to District 6, International Union of Industrial, Service, Transportation and Health Employees union dues, at a time when another Union, 1115 Nursing Home and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL–CIO, has been certified as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce any of our employees in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL reimburse each employee or former employee from whose wages we have deducted and remitted to District 6 union dues on behalf of District 6, the amount of money which has been deducted and remitted, together with interest thereon.

WE WILL recognize and, on request, bargain with 1115 Nursing Home and Hospital Employees Union - New Jersey A, a Division of 1115 District Council, H.E.R.E., AFL–CIO as the collective-bargaining representative of our employees employed by us in the unit described above.

CEDAR GROVE MANOR CONVALESCENT CENTER

## APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten a business agent for District 6, International Union of Industrial, Service, Transportation and Health Employees, or any other representative of that or any other Union, with bodily harm under circumstances where such threats became known to employees of employers with whom District 6 or such other Union has ongoing bargaining relationships, with the purpose of dissuading and discouraging the giving of testimony before the Board and to discourage access to the Board.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed to them by Section 7 of the Act.

LOCAL 1115, NURSING HOME AND HOSPITAL EMPLOYEES, A DIVISION OF 1115 DISTRICT COUNCIL, H.E.R.E., AFL–CIO